

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	
	§	Case No. 18-34658
HOUTEX BUILDERS, LLC <i>et al.</i> , ¹	§	
	§	Chapter 11
DEBTORS.	§	
	§	Jointly Administered

**MOTION TO ESTABLISH DIP CLAIM AMOUNTS, ESTABLISH FORM AND
MANNER OF NOTICE OF REMNANT ASSET AUCTION
AND FOR RELATED RELIEF**

Houtex Builders, LLC (“Houtex”); 2203 Looscan Lane, LLC (“Looscan”); and 415 Shadywood, LLC (“Shadywood” and collectively with Houtex and Looscan, the “Debtors”) file this *Motion To Establish Dip Claim Amounts, Establish Form and Manner of Notice of Remnant Asset Auction and For Related Relief* (the “Motion”) and would respectfully state the following:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. Venue of the Debtors’ chapter 11 cases (the “Chapter 11 Cases”) in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief sought are §§ 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”).

SUMMARY OF REQUESTED RELIEF

4. The Debtors file this Motion to establish the amount of the debtor-in-possession financing claims (the “DIP Claims”) of Charles C. Foster, in his capacity as debtor-in-possession financing lender (the “DIP Lender”) against each of the three Debtors’ estates. Establishing the

¹ The names of the Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Houtex Builders, LLC (2111); 2203 Looscan Lane, LLC (1418); and 415 Shadywood, LLC (7627).

amount of the DIP Claims against each Debtor will facilitate the administration of these Chapter 11 Cases. Establishing the amount of the DIP Claims against Looscan and Shadywood is necessary for the Debtors to conduct the sale of the remnant assets as contemplated in the Chapter 11 Plan and discussed in more detail below.

BACKGROUND

5. On August 23, 2018 (“Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code thereby commencing the Chapter 11 Cases.

6. The Debtors were in the business of building high-end, single-family homes in the Houston area. Looscan and Shadywood were single-purpose entities formed to finance the construction of homes at their respective addresses. Houtex financed the construction of several homes. As of the Petition Date, Houtex owned properties located at 3 Thornblade Circle, Spring TX 77389 (“Thornblade”) and 5325 Lynbrook Dr., Houston, TX 77056 (“Lynbrook”).

A. Debtor-in-Possession Financing.

7. On September 27, 2018, the Court entered a *Final Order Authorizing Debtors to Obtain Credit* [ECF No. 70] (the “First DIP Order”). Pursuant to the First DIP Order, the Court approved a Funding Commitment Letter whereby the Debtors are authorized to borrow from the DIP Lender the following amounts: up to \$60,000 to Houtex, up to \$65,000 to Shadywood and up to \$61,000 to Looscan.

8. On December 5, 2018, the Court entered *Final Order Authorizing Debtors To Obtain Credit Pursuant To Second Funding Commitment Letter* [ECF 175] (the “Second DIP Order” and together with the First DIP Order, the “DIP Orders”). Pursuant to the Second DIP Order, the Court approved a Second Funding Commitment Letter which increased the aggregate amount the Debtors are authorized to borrow from the DIP Lender as follows: up to \$245,298 to Houtex, up to \$91,540 to Shadywood and up to \$91,319 to Looscan. The Second DIP Order also provides that Houtex may

make adequate protection payments to Community Bank and Spirit of Texas Bank in the following amounts: up to \$43,939 to Community Bank and up to \$107,644.26 to Spirit of Texas Bank.

9. During these Chapter 11 Cases, the DIP Lender advanced funds to the Debtors and the Debtors in turn made disbursements for reasonable and necessary expenses as set forth in the disbursement details for Houtex, Shadywood and Looscan as follows: Exhibit A (“Houtex Disbursement Details”), Exhibit B (“Shadywood Disbursement Details”) and Exhibit C (“Looscan Disbursement Details” and collectively with the Houtex Disbursement Details and Shadywood Disbursement Details, the “Disbursement Details”).

B. Sale of Properties.

10. On November 26, 2018, the Court authorized the Debtors to sell Thornblade [ECF No. 158]. The Debtors closed the sale of Thornblade soon thereafter.

11. On December 17, 2018, the Court authorized the sale of the Shadywood and Looscan properties [ECF Nos. 197 & 198]. The Debtors closed the sale of these properties in January 2019.

12. On December 3, 2019, the Court authorized the Debtors to sell Lynbrook [ECF 451]. The Debtors closed the sale of Lynbrook soon thereafter.

C. Employment and Compensation of Professionals.

13. On October 12, 2018, this Court entered the *Order Approving Employment of Diamond McCarthy LLP As Counsel For the Debtors and Debtors-In-Possession* [ECF 105] approving the retention of Diamond McCarthy LLP (“Diamond McCarthy”) as general bankruptcy counsel for the Debtors.

14. On April 10, 2019, after notice and hearing, the Court entered the Agreed Order Granting First Interim Application for Allowance of Compensation and Reimbursement of Expenses of Diamond McCarthy LLP for the Period August 23, 2018 through December 31, 2018 [ECF No. 259] (the “First Diamond McCarthy Fee Order”). The First Diamond McCarthy Fee Order approved and allowed interim fees in the amount of \$76,426.40 (which is half of the fees requested in the first

interim application) and 100% of out-of-pocket expenses in the amount of \$10,407.30, for a total interim allowance of \$86,833.70.

15. On October 25, 2019, after notice of hearing, the Court entered the Agreed Order Granting Second Interim Application for Allowance of Compensation and Reimbursement of Expenses of Diamond McCarthy LLP for the Period January 1, 2019 through July 31, 2018 [ECF No. 389] (the “Second Diamond McCarthy Fee Order” and together with the First Diamond McCarthy Fee Order, the “Diamond McCarthy Fee Orders”). The Second Fee Order approved and allowed interim fees in the amount of \$72,581.75 (which is half of the fees requested in the Second Interim Application) and 100% of out-of-pocket expenses in the amount of \$14,216.82, for a total interim allowance of \$86,798.57.

16. On December 19, 2018, this Court entered the *Order Authorizing Employment of Schmuck, Smith, Tees & Company, P.C. As Accountant to The Debtors Nunc Pro Tunc To August 23, 2018* [ECF 201] approving the employment of Schmuck, Smith, Tees & Company, P.C. (“SST” and together with Diamond McCarthy, the “Debtors’ Professional”) as accountants for the Debtors.

17. On April 12, 2019, after notice and hearing, the Court entered the Order Granting First Interim Application for Allowance of Compensation and Reimbursement of Expenses of Schmuck, Smith, Tees & Company, P.C. for the Period August 23, 2018 through February 28, 2019 [ECF No. 267] (the “First SST Fee Order”). The First SST Fee Order approved and allowed interim fees in the amount of \$8,002.50 and out-of-pocket expenses in the amount of \$78.75, for a total interim allowance of \$8,081.25.

18. On October 15, 2019, the Court entered the Order Granting Second Interim Application for Allowance of Compensation and Reimbursement of Expenses of Schmuck, Smith, Tees & Company, P.C. for the Period March 1, 2019 through July 31, 2019 (the “Second Fee Order”) [ECF No. 368]. The Second Fee Order approved and allowed interim fees in the amount of 7,742.50 and out-of-pocket expenses in the amount of \$15.00, for a total interim allowance of \$7,757.50.

D. Chapter 11 Plan.

19. On September 4, 2019, the Court entered the *Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof* [ECF 344] approving the *Corrected Amended Joint Plan of Liquidation of Houtex Builders, LLC, 2203 Looscan Lane, LLC, and 415 Shadywood, LLC Under Chapter 11 of The Bankruptcy Code* (the “Chapter 11 Plan”) for solicitation purposes.

20. The Chapter 11 Plan provides in relevant part:

... the Debtors shall seek a determination from the Bankruptcy Court of the Allowed amount of the Shadywood DIP Claim and the Looscan DIP Claim. The amount of the Shadywood DIP Claim and the Looscan DIP Claim will be the initial bids for the Shadywood Remnant Assets and the Looscan Remnant Assets, respectively.

... the Debtors shall file a Notice of Auction of Remnant Assets ... to notify potential bidders and parties-in-interest of the Auction for the Shadywood Remnant Assets and the Looscan Remnant Assets. The Notice of Auction includes the bidding procedures (the “Bidding Procedures”) that will govern the sale of the Shadywood Remnant Assets and the Looscan Remnant Assets.

Plan, Article IV, Section C.

REQUESTED RELIEF

21. The Debtors seek entry of an order substantially in the form attached hereto, (i) establishing the DIP Claim Amounts for each of the Debtor based on the Disbursement Details including the calculation of interest, (ii) establishing a procedure to permit an increase in the DIP Claim amounts so that the Debtors can continue to rely on the DIP Lender to make reasonable and necessary disbursements that arise prior to the closing of the Chapter 11 Cases, (iii) establishing the allocation of the Professional fees and expenses among the Debtors, and (iv) approving the form and manner of Notice of Auction for the sale of the Shadywood Remnant Assets and the Looscan Remnant Assets. While the Debtors intend to identify the successful bidder for the Shadywood Remnant Assets and the Looscan Remnant Assets, the Debtors will not consummate the sales until the Court confirms the Chapter 11 Plan or the Court enters a separate order permitting consummation

of the sales.

22. The Debtors and Diamond McCarthy seek to establish the allocation of Diamond McCarthy's fees among the Debtors as follows: (i) for the period prior to February 1, 2019, the fees incurred in the Debtor-specific categories (Asset Analysis, Recovery & Disposition) shall be allocated to the specific Debtor and all other fees and expenses shall be allocated one-third to each Debtor, and (ii) for the period on and after February 1, 2019 all fees and expense shall be allocated to Houtex. Attached hereto as Exhibit D (the "Diamond McCarthy Compensation Allocation") is chart reflecting the foregoing allocations for the Diamond McCarthy Fee Orders.

23. Similarly, the Debtors and SST seek to establish the allocation of SST's fees and expense among the Debtors as follows: (i) for the period prior to February 1, 2019, the fees and expense shall be allocated one-third to each Debtor, and (ii) for the period on and after February 1, 2019, the fees and expense shall be allocated to Houtex.

24. In order to establish the DIP Claims against Looscan and Shadywood for the purposes of establishing the initial bids for the Looscan Remnant Asset sale and the Shadywood Remnant Asset sale, the Debtors seek to ratify the way the Debtors chose to make the payments of the approved compensation by having Shadywood and Looscan pay the amounts allocated to them under the Diamond McCarthy Compensation Allocation until the Shadywood's and Looscan's allocations are satisfied and then have Houtex pay the rest. Attached hereto as Exhibit E (the "Diamond McCarthy Payment Allocation") is a chart reflecting this payment allocation among the Debtors.

BASIS FOR RELIEF REQUESTED

25. Section 105(a) of the Bankruptcy Code provides in relevant part: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Section 363(b) of the Bankruptcy Code provides in relevant part: "The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate[.]" 11 U.S.C. § 363(b).

26. Establishing the amount of the DIP Claims against each Debtor will facilitate the administration of these Chapter 11 Cases. Among other things, establishing the DIP Claim amounts will also establish the initial bid amounts for Looscan Remnant Asset sale and the Shadywood Remnant Asset Sale. Once these initial bid amounts are established, the Debtors can file the Notice of Auction of the Remnant Asset sale to determine whether there are any bidders that want to bid more than the Looscan DIP Claim amount or the Shadywood DIP Claim amount.

27. In connection with establishing the DIP Claim amounts, the Debtors, Diamond McCarthy and SST have agreed to the allocation of Diamond McCarthy and SST's fees and expenses among the Debtors, as described in detail above. The Debtors believe that this allocation is fair, reasonable, and an appropriate exercise of their business judgment. Looscan and Shadywood closed on the sale of their properties in January 2019. As a result, the work performed by Diamond McCarthy and SST on and after February 1, 2019 primarily benefited Houtex. Furthermore, the Houtex estate is larger and more complicated than Looscan estate and Shadywood estate. Therefore, the Houtex estate should have a larger allocation of the Professional fees as compared to the Looscan estate and Shadywood estate. The proposed allocation is reasonable and an appropriate exercise of the Debtors' business judgment.

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CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto and grant such other relief as is just and proper.

Dated: February 21, 2020

Respectfully submitted,

DIAMOND MCCARTHY LLP

/s/ Charles M. Rubio
Charles M. Rubio
TBA No. 24083768
crubio@diamondmccarthy.com
Two Houston Center
909 Fannin, 37th Floor
Houston, TX 77010
Telephone: (713) 333-5100
Facsimile: (713) 333-5199

Counsel to the Debtors

CERTIFICATE OF SERVICE

I certify that on February 21, 2020, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas. I further certify that a true and correct copy of the foregoing document was served on February 21, 2020, by United States Mail, first class, postage prepaid to all parties on the Service List attached hereto and that a courtesy copy was delivered by hand delivery to the Office of the U.S. Trustee and chambers for the Honorable Jeffrey Norman.

/s/ Charles M. Rubio

2203 Looscan Lane, LLC
17 Courtlandt Place
Houston, TX 77006-4013

415 Shadywood, LLC
17 Courtlandt Place
Houston, TX 77006-4013

M

BMC Texas Sales, LLC d/b/a BMC
16002 Tomball Parkway
Houston, TX 77086-1010

CommunityBank of Texas NA
c/o Don J. Knabeschuh
5090 Richmond #472
Houston, TX 77056-7402

Great Southwestern Financial Corp.
c/o Ross Spence
Snow Spence Green LLP
2929 Allen Parkway, Suite 2800
Houston, TX 77019-7125

Harris County
Linebarger Goggan Blair & Sampson LLP
C/O John P. Dillman
PO Box 3064
Houston, TX 77253-3064

HouTex Builders, LLC
17 Courtlandt Place
Houston, TX 77006-4013

Montgomery County
Linebarger Goggan Blair & Sampson LLP
C/O John P. Dillman
P.O. Box 3064
Houston, TX 77253-3064

Spirit of Texas Bank SSB
c/o Bruce J. Ruzinsky
Jackson Walker LLP
1401 McKinney, Suite 1900
Houston, TX 77010-1900

1040 Hyde Park LLC
2402 Elmen
Houston, TX 77019-6710

Aldretes Masonry, LLC
Gerber & Most, PLLC
5555 West Loop South, Suite 400
Bellaire, Texas 77401-2110

Alpine Cut Stone
4755 Alpine Road, Suite 150
Stafford, TX 77477-4129

Anna Williams
2402 Elmen
Houston, TX 77019-6710

BMC
16002 Tomball Pkwy
Houston, TX 77086-1010

BMC Texas Sales, LLC dba BMC
Attn: Dawn Bailey
16002 Tomball Parkway
Houston, TX 77086-1010

Brothers II Concrete LLC
2519 Woodgate Street
Houston, TX 77039-3139

CD Homes, LLC
2402 Elmen
Houston, TX 77019-6710

CD Homes, LLC
c/o Harold May
1500 Dairy Ashford
Suit 325
Houston, TX 77077-3861

Charles C. Foster
3 Greenway Plaza Suite 800
Houston TX 77046-0322

Charles Foster
17 Courtlandt Pl.
Houston, TX 77006-4013

Chase Drywall Ltd.
411 Fannin Street, Ste 200
Houston, 77002

Circa Lighting
2427 Westheimer
Houston, TX 77098-1319

Colin Magee
P.O. Box 27011
Houston, TX 77227-7011

(p)COMMUNITYBANK OF TEXAS N A
PO BOX 26017
BEAUMONT TX 77720-6017

EFH Consulting Engineers Inc.
2906 Carrolton Street
Houston, TX 77023-5242

Elegant Additions
104 W. 12th Street, Suite A
Houston, TX 77008-6990

Esmeralda Painting Inc.
8605 Rannie Road
Houston, TX 77080-3525

Exterior Creations
14313 Green Acres Street
Crosby, TX 77532-7338

Ferguson Enterprises
P.O. Box 847411
Dallas, TX 75284-7411

Forja Designs, LLC
6113 Milwee Street, Suite A
Houston, TX 77092-6291

Gainsborough Waste
P.O. Box 4509-2
Department 2
Houston, TX 77210-4509

Grant Stone LLC
11351 Jones Road West
Suite A
Houston, TX 77065-3684

Great Southwest Financial Group
2402 Elmen Street
Houston, TX 77019-6710

Harold 'Hap' May
1500 South Dairy Ashford
Suite 325
Houston, TX 77077-3861

Harold May
2402 Elmen
Houston, TX 77019-6710

Harold May
5847 San Felipe, Suite 2200
Houston, TX 77057-3198

Harris County et al.
c/o John P. Dillman
Linebarger Goggan Blair & Sampson LLP
P.O. Box 3064
Houston, Tx 77253-3064

Harris Montgomery Counties MUD #386
822 West Pasadena Boulevard
Deer Park, TX 77536-5749

High Performance Home Companies
5438 Guhn Road
Houston, TX 77040-6211

Hmaidan & Hmaidan LLC
5606 Grand Masterpiece Court
Houston, TX 77041-5530

Houston Custom Floors
3646 West TC Jester Suite E
Houston, TX 77018

Independent Bank
750 Bering Drive, Suite 100
Houston, TX 77057-2277

Jim D. Nored
113 Sage Road
Houston, TX 77056-1417

L. Hernandez Construction Inc.
P.O. Box 2535
Spring, TX 77383-2535

Lily Charles Homes, LLC
17 Courtlandt Pl.
Houston, TX 77006-4013

Lily Foster
17 Courlandt Pl.
Houston, TX 77006-4013

Marchal/Stevenson Elevator Co., Inc.
11050 W. Little York, Bldg E
Houston, TX 77041-5056

Matts Seamless Gutter Service
6005 Milwee Street, Suite 1006K
Houston, TX 77092-6266

Montgomery County
c/o John P. Dillman
Linebarger Goggan Blair & Sampson LLP
P.O. Box 3064
Houston, Tx 77253-3064

Noel's Iron Works, LLC
1923 Hartwick Road
Houston, TX 77093-1034

Pedco Roofing, Inc.
1426 Brittmoore
Houston, TX 77043-4006

Pensco Trust Company, LLC
Custodian FBO Herbert Andrew Chiles (Dec
P.O. Box 173859
Denver, CO 80217-3859

Premier Technology Group
8564 Katy Freeway, Suite 132
Houston, TX 77024-1831

Pro-Surv
P.O. Box 1366
Friendswood, TX 77549-1366

River Oaks Property Owners Inc.
3923 San Felipe
Houston, TX 77027-3928

Robert Parker
2402 Elmen Street
Houston TX 77019-6710

SE Construction Inc.
225 Gonyo Ln., Suite 303
Richmond, TX 77469-8201

Scholl Lumber
6202 N. Houston Rosslyn Road
Houston, TX 77091-3410

Spirit of Texas Bank
625 University Drive E
College Station, TX 77840-1803

Spirit of Texas Bank
c/o Michael L. Dunham
1836 Spirit of Texas Way
Conroe, TX 77301-2080

TP Glass
114 Weisenberger Drive
Houston, TX 77022-4428

Tanglewood Homes Association
5757 Woodway, Suite 160
Houston, TX 77057-1519

Tax Assessor Collector
P.O. Box 4622
Houston, TX 77210-4622

Ted A. Cox
2855 Magnum, Suite 100
Houston, TX 77092

Texas Outhouse
P.O. Box 4509-1
Houston, TX 77210-4509

The Woodlands Township
2801 Technology Forest Blvd.
The Woodlands, TX 77381-3901

Tomball ISD
P.O. Box 276
Tomball, TX 77377-0276

US Trustee
Office of the US Trustee
515 Rusk Ave
Ste 3516
Houston, TX 77002-2604

Wishbone Welding LLC
P.O. Box 21571
Houston, TX 77226-1571

South Texas Brick & Stone, LLC
P.O Box 7766
Houston, TX 77270-7766